

**ORDINANCE NO. 15-019**

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE  
TO REGULATE CONDOMINIUMS WITHIN THE C-1-T ZONE**

**FINDINGS**

**WHEREAS**, the Pacific Grove Municipal Code (PGMC) for the City of Pacific Grove (City) controls land use through Section 23, "Zoning" and

**WHEREAS**, the Zoning Code allows condominium use in the provisions of Chapter 23.45, but those provisions are not applicable to the C-1-T district as conditions of the C-1-T district are unique from the rest of the City; and

**WHEREAS**, this measure establishes standards, conditions and other regulations to govern the development of residential condominiums in the C-1-T District; and

**WHEREAS**, until and unless such commercial condominium standards, conditions and other regulations are in place, no application for commercial condominium development shall be accepted or processed in the C-1-T district; and

**WHEREAS**, this amendment conforms with the City General Plan, and

**WHEREAS**, standards, conditions and regulations established by this measure shall be construed to be consistent with Federal and State law governing common interest residential condominium developments; and

**WHEREAS**, in compliance with the California Environmental Quality Act (CEQA), the environmental effects of the proposed C-1-T Zone Condominium Ordinance were evaluated in an Initial Study; and

**WHEREAS**, the Initial Study was prepared and made available for public review September 15, 2015 through October 4, 2015; and

**WHEREAS**, no comments on the Initial Study or the proposed Negative Declaration were received during the public review period; and

**WHEREAS**, the City Council has considered the information contained in the Initial Study, as well as all other information presented to the Council; and

**WHEREAS**, the City Council hereby finds and determines that the Negative Declaration is the appropriate document for compliance with CEQA 15063 because there is no substantial evidence that the project or any aspects of it may cause a significant impact on the environment; and

**WHEREAS**, the City Council hereby adopts the proposed Negative Declaration in compliance with the provisions of CEQA Guidelines Section 15063.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:**

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The City Council hereby adopts the C-1-T Zone Condominium Ordinance Initial Study and Negative Declaration.

SECTION 3. The City of Pacific Grove adopts the text set forth entitled "C-1-T ZONE CONDOMINIUM ORDINANCE." This shall be added as Chapter 23.32 in Title 23 and shall read as follows:

**C-1-T ZONE CONDOMINIUMS**

**23.32.010 Purpose and Intent.**

**23.32.020 Definitions.**

**23.32.030 Generally.**

**23.32.040 Permitting Procedures.**

**23.32.050 Application Requirements.**

**23.32.060 Standards.**

**23.32.070 Owners Association and Organizational Documents.**

**23.32.080 Hearing.**

**23.32.090 Findings.**

**23.32.010 Purpose and Intent.**

The City recognizes the importance of a suitable living environment for all residents and that condominium units can be an affordable and attractive form of housing.

It is the intent of the city to regulate residential condominium development within the C-1-T zone. The City recognizes the condominium form of property ownership creates unique challenges and, at times, problems relating to the land use, aesthetic, social and economic environment of the City. Therefore, it is the purpose of this chapter to accomplish the following:

- (a) Ensure adequate maintenance and repair of property within the C-1-T zone, including condominiums, to avoid conditions of disrepair inimical to the public health, safety, and welfare.
- (b) Ensure each Condominium Project is capable of satisfying the more demanding physical needs of long-term owners in contrast to the lesser expectations of short-term rental occupants.

This Chapter shall apply exclusively to properties within the C-1-T zone, and shall have no force or effect in any other location in the City of Pacific Grove.

### **23.32.020 Definitions.**

For purposes of this Chapter, words contained in this section shall be defined as follows:

- (a) "Association" means a nonprofit corporation or unincorporated association created for the purpose of managing a Common Interest Development.
- (b) "Common Area" means the entire Common Interest Development except the separate interests therein, including condominiums. The estate in the Common Area may be a fee, a life estate, an estate for years, or any combination of the foregoing.
- (c) "Common Interest Development" means any of the following: (1) a Community Apartment Project; (2) a Condominium Project; (3) a Planned Development; or (4) a Stock Cooperative.
- (d) "Condominium" means an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, water, or fixtures, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property. The term Condominium shall include the following forms of ownership: "community apartments," "stock cooperatives," and "planned developments".
- (e) "Condominium Project" means a real property development consisting of condominiums, and, for purposes of the C-1-T zone, the entire parcel of real property, including all structures thereon, to be divided into two or more Condominium Units for the purpose of constructing or converting existing structures.
- (f) "CC&Rs" refers to a declaration (the Association's Covenants, Conditions and Restrictions) meeting the requirements of California Civil Code Section 4250.
- (g) "Davis-Stirling Common Interest Development Act" or "Davis-Stirling Act" means the California Civil Code, beginning at section 4000, as it may be amended from time to time.
- (h) "Developer" means the owner or subdivider with a controlling proprietary interest in the Common Interest Development, or the person or organization making application under this Chapter.

(i) "Organizational Documents" means the CC&Rs, articles of incorporation, bylaws, and any contracts for the maintenance, management, or operation of all or any part of a Condominium Project.

(j) "Owners Association" shall have the same meaning as the term Association.

(k) "Project" shall have the same meaning as the term Condominium Project.

(l) "Reserve Accounts" and "Reserve Moneys" mean moneys that the Association board has identified for use to defray the future repair or replacement of, or additions to, those major components that the Association is obligated to maintain.

(m) "Reserve Account Requirements" means the estimated funds that the Association board has determined are required to be available at a specified point in time to repair, replace, or restore those major components that the Association is obligated to maintain.

(n) "Reserves for Common Expenses" means moneys held by the Association that may be expended for ongoing ground and building maintenance, maintenance and operation of recreational and other facilities, elevator maintenance, sidewalks and street maintenance, reserve contributions, taxes, and overall maintenance of common areas and facilities.

(o) "Tenant" means a person who rents, leases, or subleases, through either a written or oral agreement, real property from another in the Condominium Project.

(p) "Unit" is any separately owned residential unit in a Condominium Project.

#### **23.32.030 Generally.**

(a) This Chapter shall apply solely to the C-1-T zoning district, and shall be subject to the provisions of Chapter 23.64 PGMC unless provisions of this Chapter conflict with Chapter 23.64 PGMC, in which event the provisions of this Chapter shall prevail.

(b) The Davis-Stirling Act is adopted by this reference and incorporated in this Chapter as if set forth in full, as authorized by Government Code Section 50020, et seq. The city may, but is not obligated to, enforce the Davis-Stirling Act in accord with all enforcement procedures and remedies set forth in Chapter 1.19 PGMC, in addition to any other provision of law.

(c) Common Interest Developments shall be subject to the provisions of the Davis-Stirling Act unless the express provisions of this Chapter conflict with the Davis-Stirling Act, in which event the provisions of this Chapter shall prevail.

#### **23.32.040 Permitting Procedures.**

(a) Certificate of use and occupancy requirements. No person, firm, corporation, partnership or other entity shall create, own or operate any form of Common Interest Development or other

form of real property ownership without first obtaining approval by the Planning Commission and having been issued a certificate of use and occupancy by the Community and Economic Development Director.

(b) Issuance and Expiration. The Community and Economic Development Director shall issue a certificate of use and occupancy for Condominium use when he or she determines that:

- (1) The applicant has complied with all the applicable city and state regulations then in effect;
- (2) The applicant has complied with all conditions of approval. A permit shall expire at the time a tentative subdivision map approval would expire if not acted upon, or if the conditions of approval have not been complied with in such time.

(c) Conditions prerequisite to issuance. No certificate of use and occupancy for Condominium use shall be issued for a building or Common Interest Development until it meets the following standards:

- (1) The proposed density and design characteristics of the buildings and grounds conform to the City General Plan and comply with the City Zoning Code.
- (2) All violations of the current codes described in PGMC 18.04.010 have been corrected and any equipment or facilities which the Chief Building Official determines are deteriorated or hazardous have been replaced.
- (3) It complies with all provisions of the Subdivision Map Act and PGMC Title 24, as applicable, including PGMC 24.72.030 (a) and (b) and PGMC 24.72.060 (e).

### **23.32.050 Application Requirements.**

An application for a Condominium Project in a C-1-T zone shall be accepted only for the purposes of creating residential uses. No application for a Condominium Project in a C-1-T zone shall be accepted for any purpose unless the application includes the following:

- (a) A development plan of the Project including:
- (1) The location, heights, gross floor area, and proposed and authorized uses for each floor within each structure;
  - (2) The description of each Unit in sufficient legal description, as required by the Davis-Stirling Act, and all rights, obligations and interests bound to each Unit;
  - (3) The designation as to which areas and Units are dedicated to separate Condominium ownership, and which areas are dedicated to common ownership and use;
  - (4) The location for public meeting rooms for use by the Association;
  - (5) The location for public meeting rooms available for use by the City of Pacific Grove;
  - (6) The location, use and type of surfacing for all storage areas;
  - (7) The location of any and all common elements and equipment, including, but not limited to, HVAC, elevators, gates and doors, water features, and public features;
  - (8) The location and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, curb cuts, and points of access;

- (9) The location and size of all parking facilities to be used in conjunction with each Condominium Unit;
- (10) The location, height, and type of materials for all exterior or perimeter walls or fences;
- (11) The location of all landscaped areas, the type of landscaping, and a statement specifying the method by which the landscaped areas shall be irrigated and maintained;
- (12) The location and description of all common facilities and a statement specifying the method of the maintenance thereof;
- (13) The location and description of all common ingress and egress into the buildings or ancillary features ;
- (14) The location, type and size of all drainage pipes and structures depicted or described to the nearest public drain or watercourse;
- (15) The maximum height of all finished rooftops;
- (16) The location, type and size of all on-site and adjacent street overhead and underground utility lines;
- (17) Balconies. including those designed to serve a single Unit, but located outside the Unit's boundaries, and proposed and authorized uses (or use limitations) for each;
- (18) Existing and proposed exterior elevations;
- (19) All rooftop facilities, including wireless equipment, and all screening related to those features;
- (20) The location of and provisions for any unique site features.

(b) A "Reserve Study" as required by the Bureau of Real Estate, Code of Regulations, and Davis-Stirling Act, and the funding plans for major common area components the Association is obligated to maintain.

(c) A report by a qualified acoustical consultant, based on field tests, which assesses compliance of existing Units with sound transmission requirements of Chapter 35 of the Uniform Building Code. This shall apply to walls, floors and ceilings that separate proposed dwelling Units from each other. Field studies may be based on randomly selected Units representative of the type and arrangement of Units in the Project. At least ten percent of the Units shall be tested, but no fewer than two Units of each type (e.g., internal vs. external), whichever is the greater number. The report shall contain details of measures that may be necessary to bring the Units up to code requirements.

(d) Sales information, including, but not limited to, the following information:

- (1) Anticipated range of sales prices, monthly mortgage payments, owner's fees, and taxes for individual Unit types based on information available at the time; and
- (2) A statement as to whether residential Units will be restricted in occupancy to persons 55 years of age or older, pursuant to the Unruh Civil Rights Act.

(e) Floor plans of each Unit indicating the number of bedrooms and floor areas of each type of Unit and the number of each type of Unit.

(f) A written description of organization and management of the Project, including control and use of common areas, all facilities, and all separate Units.

(g) A title insurance report in the form employed by lending institutions.

(h) A certified surveyor's report indicating the boundaries and all real property and improvements.

(i) Additional information as required by the Community and Economic Development Director or Planning Commission.

(j) A processing fee as established by resolution of the City Council or as set in the Master Fee Schedule, in addition to any fees required by the PGMC.

(k) The Community and Economic Development Director may waive any informational requirement of this section if that information is deemed unnecessary.

### **23.32.060 Standards.**

Condominium standards in this Chapter are the minimum necessary to ensure that stated purposes and objectives are accomplished. Condominium Projects shall comply with these standards and the standards set forth by the Davis-Stirling Act. Standards for the physical development of Condominiums are as follows:

(a) Unit Construction. The total number of Condominiums allowable in the C-1-T Zone shall not exceed 25 Units.

(b) Sound Transmission. Wall and floor-ceiling assemblies shall conform to Title 25, California Administrative Code, Section 1092, or its successor. Permanent mechanical equipment, including domestic appliances, determined by the Chief Building Official to be potential sources of vibration or noise, shall be shock mounted, isolated from the floor and ceiling, or otherwise installed in a manner approved by the Chief Building Official to lessen the transmission of vibration or noise. Floor covering may only be replaced by another floor covering that provides the same or greater insulation. The standards set forth herein shall be included in the CC&Rs.

(c) Utilities and Utility Metering.

(1) Consumption of gas, electricity and water within each Condominium Unit shall be separately metered so the Unit can be separately billed for each utility. A water shut-off valve shall be provided for each Unit or for each plumbing fixture. Each Unit shall have access to each meter and heater for the Unit without entry through another Unit.

(2) Each Condominium Unit shall have its own panel, and access thereto, for all electrical circuits which serve the Unit.

(3) Each Condominium Unit shall have conduits or other passages for optical fiber or copper connection to CATV, phone, and internet lines.

(4) Each Condominium Unit shall be plumbed for purple pipe.

(d) Private Storage Space. Each Condominium Unit shall have at least 200 cubic feet of enclosed weather-proofed and lockable private storage space in addition to the enclosed living or habitable area of the Unit. This storage space shall be for exclusive use of the Condominium Unit owner. The storage space may be provided in any location, but shall not be divided into two or more locations. If the applicant can demonstrate this standard is unreasonable, this standard may be modified by the Community and Economic Development Director.

(e) Equipment and Appliances. The applicant shall provide written certification to the buyer of each Condominium Unit upon initial sale that any dishwashers, garbage disposals, stoves, refrigerators, hot water tanks, and/or air conditioners are in good and working condition as of the close of escrow. At such time as the Association assumes management of the Project, the applicant shall provide written certification to the Association that the applicant completed a diligent visual inspection of all property within the Project and all appliances, mechanical equipment and common area property and components to be owned in common by the Association are in good and working condition.

(f) Easements. The applicant shall provide for dedication of land or easements for public access or other public purpose in connection with the Project where reasonably necessary, if required by the Planning Commission.

(g) Refurbishing and Restoration. All buildings, structures, balconies, fences, enclosures, garages, accessory buildings, sidewalks, driveways, landscaped areas, irrigation systems, and other elements as required by the City shall be maintained as necessary to achieve high quality appearance and safety.

(h) Parking Standards. Off-street parking requirements for each Condominium Unit shall be one covered parking space per Unit. Fourteen additional spaces shall be provided immediately adjacent to the Holman Building parcel; these spaces shall be marked and limited for visitor use. Dedicated parking spaces shall not be delineated for commercial or customers use.

(i) CC&Rs. The Community and Economic Development Director shall approve all CC&Rs for any Condominium Project before they are recorded with the County Recorder's Office and before any Condominium Unit shall be sold.

**23.32.070 Owners Association and Organizational documents.**

The developer and/or owner shall form and incorporate an Association that complies with the Davis-Stirling Act and that has been approved by the Community and Economic Development

Director. Approval shall be required before assumption of Project management by the Association.

(a) Owners Association. The Association shall be established for all Condominium Units by the following:

- (1) Articles of Incorporation of the Association, filed with the Secretary of State;
- (2) Declarations of CC&Rs, recorded with the County Recorder's Office;
- (3) Bylaws of the Owners Association, signed and certified by the initial Secretary and President.

(b) Reserve Accounts. Association CC&Rs and Bylaws shall require reserve accounts, and provide for funding and use of those accounts in accordance with the Davis-Stirling Act.

(c) Limit on Use of Reserves. Except as allowed by the Davis Sterling Act, reserves shall not ordinarily be used to pay any of these expenses: recurring costs such as utility expenses, heating or cooling, janitorial services, solid waste disposal, grounds and building maintenance, security, insurance, other operating costs, management costs, accounting and bookkeeping services, legal services, and management fees. Use of reserves for these purposes shall require compliance with the Davis-Stirling Act.

(d) Approval of CC&Rs. Condominium CC&Rs shall be submitted to the City for approval at the time of the use permit application. The CC&Rs shall first be approved as to form and content by the City Attorney and then by the Planning Commission at the time the Commission acts on the use permit, before they, or any amendments, are recorded with the County Recorder's Office. The City shall similarly review and approve any amendment to the CC&Rs. The Condominium CC&Rs shall contain, but not be limited to, the following provisions:

- (1) On-site property improvements, common areas, vehicular access ways, sewers, storm drains, street lighting, fire prevention water systems, and/or landscaping shall be maintained as a common expense by the Association.
- (2) Beginning with the sale of the first Condominium Unit and continuing for a period of one year after the sale of no less than fifty percent of the Condominium Units, the Developer shall fulfill all responsibilities of the Association to maintain all common area facilities.
- (3) If maintenance responsibilities of the Association are not fulfilled, the City shall have the power but not the obligation to compel such maintenance. Costs incurred by the City shall be billed to and paid by the Association. The City may also recover its expenses by any means, including but not limited to placing a lien on the property, but not upon individual Units.
- (4) The Condominium Project shall be managed by a managing agent, as defined in Civil Code Section 4158.

- (5) No individual owner may avoid liability for his or her prorated share of the expenses for common area by renouncing his or her rights in the common area.
- (6) Provisions to govern exclusive use of a designated parking space for each Condominium Unit.
- (7) Amendment or modification to the CC&Rs shall require the advance approval of the City.

**23.32.080 Hearing.**

Concurrent with Tentative Map approval, the Planning Commission shall hold a public hearing on the application. In addition to publication and posting of legal notice, notice of the hearing shall be mailed at least 10 days prior to hearing date to occupants and Owners of the site, and shall be posted on the property.

**23.32.090 Use Permit – Required Findings.**

The Planning Commission shall not approve an application to create a Condominium unless the Planning Commission finds that:

- (a) All provisions of this chapter are met and the Project will not be detrimental to the health, safety, and general welfare of the community.
- (b) The proposed Condominium is consistent with the general plan of the City of Pacific Grove.
- (c) The proposed Condominium will conform to the Pacific Grove Municipal Code in effect at the time of approval, except as otherwise provided in this chapter.
- (d) The overall design and physical condition of the Condominium will result in a Project that is aesthetically attractive, safe, and of quality construction.
- (e) The requirements of PGMC 23.29.110 have been met.

SECTION 4. In accord with Article 15 of the City Charter, this ordinance shall take effect thirty days following passage and adoption hereof.

SECTION 5. The City Manager and City Clerk are directed to perform all tasks necessary to implement this ordinance. This measure may, but shall not be required to, cause republication of the Pacific Grove Municipal Code.

SECTION 6. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares

that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses, or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

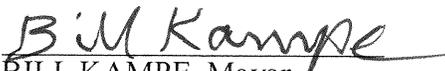
**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE** this 21<sup>st</sup> day of October, 2015, by the following vote:

AYES: Mayor Kampe, Councilmembers Cuneo, Fischer, Huitt, Lucius, Miller, and Peake.

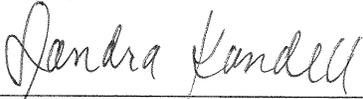
NOES: None.

ABSENT: None.

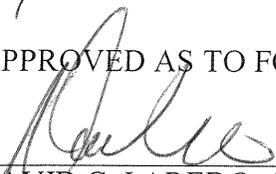
APPROVED:

  
BILL KAMPE, Mayor

ATTEST:

  
SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

  
DAVID C. LAREDO, City Attorney

